

# **Exhibit H**

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January 22, 2021

VIA ECF

The Honorable John M. Vazquez, U.S.D.J.  
United States District Court for the District of New Jersey  
Courtroom PO 03  
50 Walnut Street  
Newark, New Jersey 07102

Re: *Daniel D'Ambly v. Christian Exoo et al.*, Civil Action No.: 2-20-cv-12880-JMV-JAD  
Opposition to Tribune Publishing Company, Inc., and New York Daily News' Request  
for Leave to file a Motion for Summary Judgment

Your Honor,

This office represents Plaintiff Daniel D'Ambly (hereinafter "D'Ambly") in the above referenced matter and opposes Defendants Tribune Publishing Company, Inc., and New York Daily News' (collectively "Daily News") request for leave to file a motion for summary judgment. Enclosed herein are D'Ambly's argument in opposition, statement of material facts, and supplemental statement of disputed material facts.

Daily News' motion is a naked attempt to avoid litigating their textbook pre-textual racially discriminatory termination of D'Ambly. The Daily News argues that D'Ambly is precluded from bringing this claim, because he knowingly and voluntarily signed the "separation agreement," but they are wrong. The separation agreement that forced D'Ambly to surrender his intangible property rights was contrived by deceit and induced by fraud. In order to establish a claim for fraudulent inducement five elements must be shown: (1) a material representation of a presently existing or past fact; (2) made with knowledge of its falsity; (3) with the intention that the other party rely thereon; (4) resulting in reliance by that party; (5) to his detriment. *RNC Sys., Inc. v. Modern Tech Grp., Inc.*, 861 F.Supp. 2d 436, 451 (D.N.J.). We will prove the daily News knowingly misrepresented material facts to induce D'Ambly to sign.

D'Ambly was brought to the table by demonstrably false statements as to the alleged "cause" of D'Ambly's termination. D'Ambly was lied to and denied the full facts of the Daily News' deception. So disgusting was D'Ambly's mistreatment that the extortionist that triggered his termination celebrated D'Ambly's termination and publicly announced it twenty-four (24) hours before the Daily News claimed it learned of the acts that "caused" his termination. In short, D'Ambly was sandbagged.

The Daily News will argue that they terminated D'Ambly, because of his affiliation with an alleged white supremacist group, that although has not committed any actual hateful acts, has been designated a hate group by the Southern Poverty Law Center ("SPLC") and the Anti-Defamation League ("ADL").

The Complaint does not allege that an employer could not enforce an employment policy of not employing members of alleged hate groups. However, if the Daily News has such a policy it is not uniformly applied, because the Daily News continues to employ persons that are members of SPLC and ADL designated hate groups, specifically those that are allegedly anti-Semitic. Thus, the Daily News' apparent practice of only terminating members of alleged white supremacist groups, further supports D'Ambly's claim that his termination was motivated by racial animus.

In the case at bar, on or about October 29, 2018, Christian Exoo aka @AntiFashGordon ("Exoo") directed his associates to make hundreds and we believe discovery will prove thousands of threatening phone calls, emails, and Tweets to the Daily News, its parent, subsidiaries, and the Teamsters to extort D'Ambly's termination. Unlike almost every incident where Exoo and associates extorted employment terminations the Daily News could not immediately terminate D'Ambly, because he was a union contracted employee. Moreover, as Daily News' Senior Vice President of Operations, James R. Brill ("Brill") confirmed in D'Ambly's "Last and Final Warning" ("LFW") letter dated January 11, 2019, "our investigation, thus far, has not confirmed that your activity with NJEHA [New Jersey European Heritage Association] has spilled over into the workplace," therefore, the Daily News had no cause to terminate D'Ambly, so they set out to manufacture the "cause" it needed to terminate D'Ambly.

First, they hired a private investigator to surveil and investigate D'Ambly for terminable acts. The investigator produced a report, but the report was a dud. The report only confirmed D'Ambly participated in protected political speech and rallies and did not find that D'Ambly engaged in racially motivated acts, and/or represented himself as a Daily News employee or Teamster during political rallies. The Daily News' effort to exercise the "cause" to terminate D'Ambly culminated over a four-day period in January 2019.

In the afternoon of January 10, 2019, D'Ambly was called to a meeting with Brill, Union Steward Pete Cairnie and Jean Nechvatal, Tribune's Vice President, Talent Management & Learning. During the meeting, D'Ambly was confronted with the report's findings, which included his association with the New Jersey European Heritage Association ("NJEHA"), but he was not informed about the investigation or the contents of the report. He was asked whether he ever used the word "kike" in reference to Jewish people.

On January 11, 2019, at 10:21 a.m., or perhaps earlier, internal emails show that the Daily News knew it received at least two threatening voicemails directed at D'Ambly, but did not inform him. That afternoon D'Ambly was called to a second meeting with Brill, where he was issued the LFW. In the LFW, the Brill acknowledged D'Ambly did not bring his politics into the workplace and "no derogatory comments were made about any co-workers." But Brill warned "if the Company or any of its employees suffer any backlash as a result of your association with the NJEHA, your conduct will be considered "work-related" and you will be terminated immediately." Brill did not disclose that threatening voicemails were received in the morning of January 11, 2019, because Brill intended to use those calls as evidence of "backlash" so he could terminate D'Ambly based on a violation of the LFW.

On January 13, 2019, Exoo publicly celebrated and announced D'Ambly's termination in a Tweet that said a "reliable source" informed him D'Ambly was "no longer with the Daily News." Upon information and belief, Exoo's "reliable source" shared confidential information from D'Ambly's personnel file with Exoo either directly or through an intermediary before January 13, 2019.

On January 14, 2019, D'Ambly was told not to report to work. On January 16, 2019, during a phone conference, D'Ambly was informed he was terminated. Thereafter he received his "Termination of Employment" ("TOE") letter dated January 22, 2019, which informed him his termination date was January 18, 2019. The TOE claimed the Daily News learned of the January 11, 2019, threatening voicemails on January 14, 2019, which is patently false, because Daily News' internal emails prove they knew of the calls the morning of January 11, 2019.

The Daily News' acknowledged their duty to warn their employees by their conduct during this period, because employees were warned to take precaution entering and exiting the building. In the TOE Brill stated the threatening voicemails "caused our company to have serious concern for the safety of our employees," therefore, the "Company felt compelled to hire extra security to protect our employees and to notify the local law enforcement authorities." The extra security was necessary according to Brill, because the Daily News was at "risk of counter attacks by Antifa."

Moreover, when D'Ambly signed the separation agreement he was not aware of the Daily News' misrepresentations, therefore, he did not mutually assent to the separation agreement, because the material misrepresentations contained in the TOE are the basis for the separation agreement. Paragraph one on the separation agreement titled "Separation of Employment" states "your employment with the Company terminated on January 18, 2019..." In the TOE, the Daily News' misrepresented when they learned of the voicemails to use those voicemails as the "cause" of his termination. These claims are false.

In this action, the facts will prove that D'Ambly committed no acts that warranted termination under his union contract, so the Daily News contrived the "cause" of D'Ambly's termination. He was fraudulently induced to sign a separation agreement premised on the Daily News' deceit and misrepresentations.

For these reasons, the Daily News' request for leave to file a motion for summary judgment should be denied.

Respectfully submitted,



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Patrick Trainor